
**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

**C.W.P. No. 2158 of 1989
Date of decision: 23.3.2007**

**M/s Haryana State Electricity Board, Steel Structure Fabrication Workshop,
Assan (Panipat)**

...Petitioner

Versus

The Assistant Collector, Customs and Central Excise and another

...Respondents

CORAM: HON'BLE MR.JUSTICE RAJESH BINDAL

Present: Mr.Sanjay Bansal, Senior Advocate with
Ms.Suman Dhiman, Advocate for the petitioner.
None for the respondents.

RAJESH BINDAL, J.

The prayer made in the present petition is for issuance of a writ in the nature Certiorari for quashing order dated December 23, 1988 passed by the Assistant Collector, Customs and Central Excise, Ambala City, whereby demand of Rs. 8,00,625-85 has been confirmed against the petitioner on account of excise duty, besides challenging the vires of "Heading No.73.08" including its sub-heads incorporated in Section XV, Chapter 73 of the Schedule to the Central Excise Tariff Act, 1985.

Petitioner instead of filing statutory appeal had directly approached this Court by filing the present petition, which was admitted on August 7, 1989 and the interim order dated February 21, 1989 was ordered to be continued.

I have heard Shri Sanjay Bansal, learned Senior Advocate for the petitioner. No one has chosen to appear for the respondents.

Briefly the facts, as pleaded in the petition, are that the

petitioner was a statutory body owned by the State Government, constituted under the Electricity (Supply) Act, 1948. For the purposes of transmission and distribution of electric power in the State of Haryana, petitioner was required to erect, at sites in the fields, transmission lines/towers made up of iron and steel angles, plates, channels etc. In the process various activities like sizes, punching of holes, drilling, straightening, notching and bending etc. are carried out in the workshop of the petitioner situated at Assan. The components required for erection of poles, transmission lines are carried to the sites where towers are to be erected, which are embedded in the earth for which necessary concrete foundation is laid. After erection of the towers/transmission lines, these become immovable property. Whatever material is used by the petitioner in erection of towers/transmission lines, the same is purchased after payment of due excise duty, if leviable. On May 11, 1988, a notice was received by the petitioner to show cause as to why excise duty on the fabrication of steel structure cleared from the workshop during the period from February 1, 1988 to April 30, 1988 be not levied and recovered under Section 11-A of the Central Excise Act, 1944 (for short 'the Act'). The show cause notice was duly replied to by the petitioner vide letter dated June 21, 1988 objecting to the levy of duty proposed in the show cause notice under reply. In support of the plea, an order dated August 24, 1987 passed by the Collector of Central Excise (Appeals), New Delhi was also referred to. However, still a demand of Rs. 8,00,625-85 of excise duty was raised against the petitioner vide order dated December 26, 1988 (Annexure P-5), which is impugned in the present petition.

The primary contention raised by learned counsel for the petitioner is that process in question does not amount to manufacture of any marketable goods and accordingly the excise duty thereon is not leviable. He has referred to and relied upon judgments of Hon'ble Supreme Court in **Bhor Industries Ltd. Bombay Vs. Collector of Central Excise, Bombay AIR 1989 Supreme Court 1153, Quality Steel Tubes (P) Ltd. Vs. Collector of Central Excise, U.P. 1995 (75) E.L.T. 17 (SC), Mittal Engineering Works (P) Ltd. Vs. Collector of Central Excise, Meerut**

(1997) 106 STC 201, Commissioner of Central Excise-I, New Delhi Vs. S.R.Tissues (P) Ltd. and another (2005) 6 SCC 310 and Gujarat Narmada Valley Fertilizer Co. Ltd. Vs. Collector of Excise and Customs (2005) 7 SCC 94.

No one has put in appearance on behalf of respondents.

Much facts are not required to be gone into in the present case as I find that in the case of the petitioner itself for the period prior and subsequent to the period in question, on the same issue, the matter had gone up to the Customs, Excise and Gold (Control) Appellate Tribunal (for short 'the Tribunal') and vide order dated August 12, 1998 passed in final order Nos. E/1263 to 1265 of 1998 , the issue was decided in favour of the petitioner. In terms of the order of the Tribunal pertaining to the periods from 6.4.1987 to 11.9.1987 and 26.5.1988 to 29.7.1989, the amount of duty paid by the petitioner was ordered to be refunded vide orders dated December 29, 2000. Once for the period earlier and later to the period in question, the revenue has already accepted the view expressed by the Tribunal and refunded the amount to the petitioner, I do not find that there is any justifiable ground to uphold the levy for the period in between. Accordingly, the impugned order Annexure P-5 passed by respondent no.1 is quashed and it is directed that the amount of duty, if any, paid by the petitioner, in terms of the impugned order be refunded back to the petitioner.

The writ petition is disposed of in the manner indicated above.

March 23 , 2007
Pka

(Rajesh Bindal)
Judge